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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,818	08/17/2001	Eddie J. Tsataros	130778-M200	5859

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EXAMINER

CECIL, TERRY K

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 11/20/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,818

Applicant(s)

TSATAROS ET AL.

Examiner

Mr. Terry K. Cecil

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 2, 6, 8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2002 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1, 3-5, 7 and 9, drawn to a fluid treatment device with a counter mechanism including a color coding system, classified in class 116, subclass 335.
 - II. Claims 2, 6, 8, and 10 drawn to a fluid treatment device with a counter mechanism including plural selective counter cycles, classified in class 210, subclass 85.
2. The inventions are distinct, each from the other because of the following reasons:
 - Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as in a counting mechanism that does not require the plural selective counter cycles of invention II. Invention II has separate utility such as in a counting mechanism that does not require the color coding system of invention I. See MPEP § 806.05(d).
3. Restriction for examination purposes is proper because of the reasons given above and also because (i) they have acquired a separate status in the art as shown by their different classification, (ii) the search required for the respective groups is not necessarily required by each of the other groups, and (iii) their subject matter is recognized as divergent.

4. During a telephone conversation with Taylor Ross on 11-14-2002 a provisional election was made without traverse to prosecute invention I, claims 1, 3-5, 7 and 9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2, 6, 8, and 10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

6. In the IDS filed 11-27-2001, inventor name "Levene" was misspelled. However, such was corrected by the examiner (see the attached copy of the IDS).

Specification

7. The disclosure is objected to because of the following informalities:

- inventor names "Hofman" and "Lund" have been misspelled (on page 2)¹;

¹Note that the Bailey reference cited by the applicant on page 2 of the specification has also been cited by the examiner on the attached F-892 since such was not cited by the applicants. A copy of the reference has not been provided.

Art Unit: 1723

- on page 8, applicant has used "H" to designate the darker yellow color; however, "H" has already been used to designate the handle of figure 1 (page 6); and
- "38" has been used to designate both the teeth and the spindle (page 7).

Appropriate correction is required.

Drawings

8. The drawings filed 3-22-2002 are objected to because of the following reasons:
- The following reference numbers² mentioned in the disclosure are not shown in the drawings: "26" (page 6); "32" and "34" (page 7); "94" (page 9). See 37 CFR 1.84(p)(5).
 - The drawings include the following reference signs not mentioned in the disclosure: "28" and "25" (figure 4). See 37 CFR 1.84(p)(5).
 - "Y" has been used to designate both the inner lid (figure 1) and the color yellow (figures 5, 9, 11, and 13).

Applicant is required to submit a proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. *Objections to the drawings will not be held in abeyance.*

²The objections concerning reference numbers in the specification and the drawings are not meant to be exhaustive; applicant should ensure that each of the drawing reference numbers are included in the specification and vice versa.

Claim Rejections - 35 USC ' 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.
Ascertaining the differences between the prior art and the claims at issue.
Resolving the level of ordinary skill in the pertinent art.
Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1, 3-5, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moretto (U.S. 5,900,138) in view of Rolfes (U.S. 6,306,290). As shown in figure 1 reproduced on the next page, Moretto clearly discloses the preambles of claims 1 and 7.

Art Unit: 1723

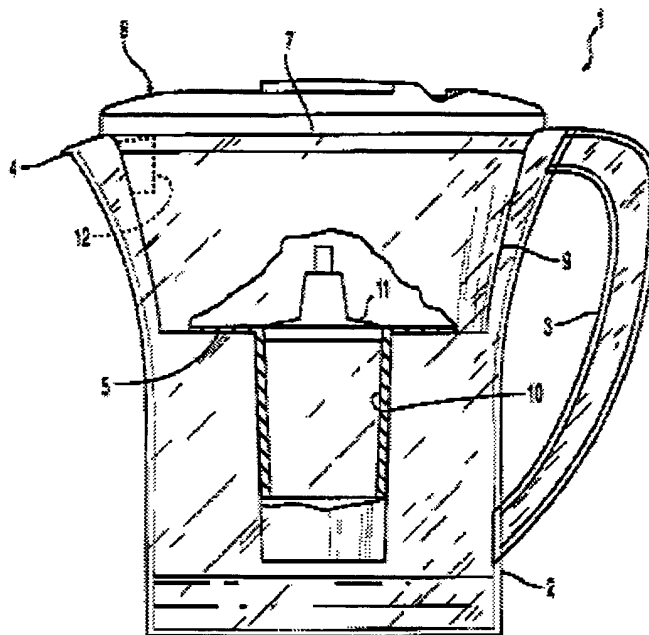


Fig. 1

As shown above, Moretto discloses a fluid treatment device comprising:

- a container 2 including a pre-filt chamber 9 and filter 11 arranged such that filtered water is passed into the filtrate chamber therebelow via the connecting element 5 which includes filter housing 10; and
- a removable and replaceable cap 8.

In figure 18 reproduced on the next page, Moretto also discloses

- an electronic counting mechanism 15 positioned on lid 8, wherein the mechanism is indexed by an indexing element [as in claims 1 and 7]. As explained by Moretto: "... 15 is operated

by a lever 80 a front portion 81 of which acts on the push-button 70 which, upon the closure of the lid 8 also rotates the numbering on the display 71 visible on the upper wall of...15.”³

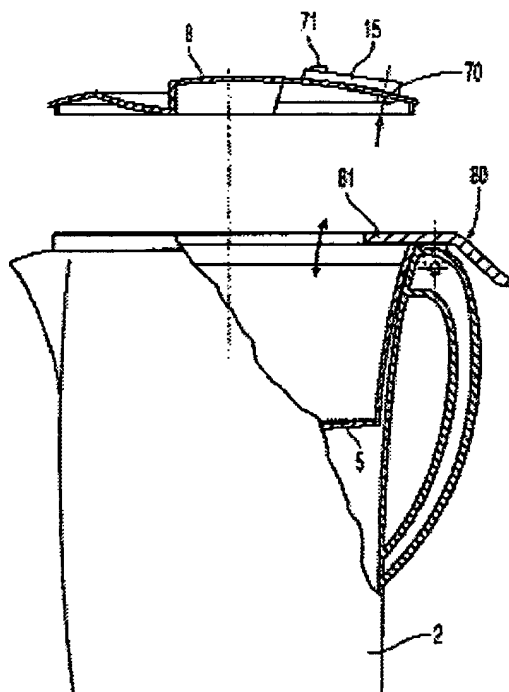
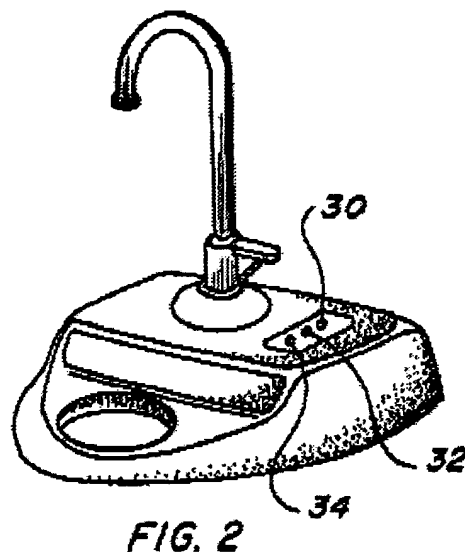


Fig. 18

Moretto does not disclose his counter mechanism to include a sequentially changing visual color coding system for indicating the present status of the filter. However, such is taught by Rolfes. Rolfes teaches a counter top water purifier (see figure 2 reproduced on the next page) that includes an electronic visual color coding system [as in claims 1 and 7] that comprises three color changes [as in claims 3 and 4] that change sequentially from green 30 to yellow 32 to red⁴ [as in claims 5 and 9].

³See col. 4, lines 33-37.

⁴ Although Rolfes' color coding system has the ability to sequentially change among three colors as in claims 3-5 and 9, the identity of the colors (green, red...) and sequence thereof fail to structurally limit the invention: this is a non-trademark application.



It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the electronic color coding system of Rolfes as part of the electronic mounting system of Moretto, since Rolfes teaches the benefit of logic and colors well known to the public that are the most reasonable type of warning as to the status of a water purification system.⁵ It is also pointed out that Rolfes teaches that his filter status indicator lights can be incorporated into same electronic circuit and even the same mounting surface of existing water purification indicator systems.⁶

⁵ See col. 2, lines 43-47.

⁶ See col. 2, lines 62-67.

Art Unit: 1723

11. Applicants may wish to consider the following germane references before amending the claims:

- If it is applicants' intention to amend to the claims to require only a *mechanical* counting/indexing mechanism, he should consider that Moretto also teaches such in figure 4 as shown below:

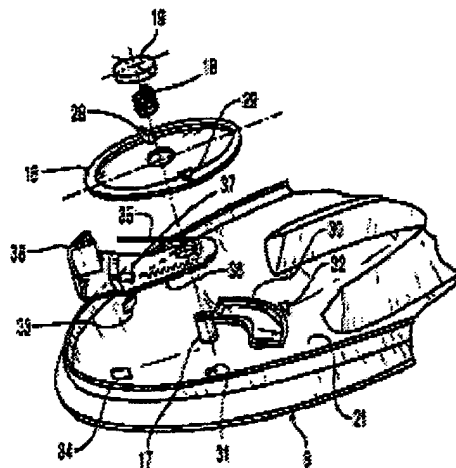


Fig. 4

And that *mechanical* color coding systems are well known as taught by Mitchell (U.S. 376,103):

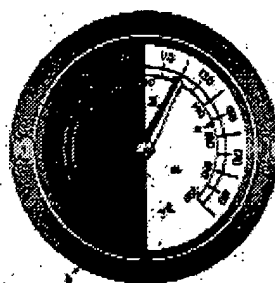


Fig. 1

1. A sight signal or indicator having a field or dial the face of which is painted or otherwise made in two strongly contrasting colors, with a clearly-defined dividing-line at any desired point, in combination with an index-finger or pointer arranged to move over said field or dial, and having its outer face painted or otherwise made in the same two strongly-contrasting colors.

Art Unit: 1723

12. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (703)305-0079 for any inquiries concerning this communication or earlier communications from the examiner. Note that the examiner is on the increased flextime schedule but can normally be found in the office during the hours of 8:00a to 4:30p, on at least four days during the week M-F.
- The group receptionist can be reached at (703)308-0661 for inquiries of a general nature or those relating to the status of this or proceeding applications.
- Wanda Walker, the examiner's supervisor, can be reached at (703)308-0457 if attempts to reach the examiner are unsuccessful.
- Fax numbers for this art unit are as follows:
 - i. (703)872-9310 for *official* faxes (i.e. faxes to be entered as part of the file history) that are not after-final; and
 - ii. (703)872-9311 if after-final.

Examiner Terry Cecil
A.U. 1723

TKC

November 15, 2002